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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

KIN/153198

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 28, 2013, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Waukesha County Department of Health and Human Services in regard to Kinship Care, a hearing was held on November 19, 2013, at Waukesha, Wisconsin.

The issue for determination is whether the Waukesha County Department of Health and Human Services (the agency) correctly denied Petitioner's request for Kinship Care benefits.

NOTE: The record was held open to allow the agency to submit a copy of Petitioner's application and the letter denying her application. This packet has been marked as Exhibit 2 and entered into the record. The record was also held open to allow the Petitioner to submit additional documents. The Petitioner submitted a 14 page fax that included information regarding [REDACTED] Apartments, including a lease; a copy of a prescription bottle; and a student profile. The fax has been marked as Exhibit 3 and entered into the record.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Kathy Mullooly, Share Service Supervisor  
Waukesha County Department of Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner is a resident of Waukesha County.
2. On August 15, 2013, Petitioner filed an application for Kinship Care benefits for SA, age, 17. (Exhibit 2)
3. On October 18, 2013, the agency sent Petitioner a notice indicating that her application for Kinship Care benefits was denied because SA was not at risk of being a child in need of protection or services under Wis. Admin. Code. §48.13. (Exhibit 2)
4. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on October 28, 2013. (Exhibit 1)
5. Petitioner is SA's sister. Petitioner lives with her husband and has children of her own. (Exhibit 2; Testimony of Petitioner)
6. SA's mother is JA. She lives in subsidized housing for Senior Citizens age 55 or older and disabled individuals. (Exhibit 3, pgs. 2-5)
7. SA's father is incarcerated and has been convicted of sexual assault of a child. (Testimony of Petitioner; Exhibit 2)
8. SA has been truant from school over 30 times a year during his freshman, sophomore and junior years of high school and has been out sick 90 or more times per year during that same time. (Exhibit 3)
9. SA has mental health issues and has been diagnosed with anxiety and depression. SA is prescribed anti-depressant medication. SA also has an Individualized Education Program at School. (Testimony of Petitioner; Exhibit 3, pg. 6)
10. SA has resided with Petitioner since March 1, 2013. (Exhibit 2) Petitioner has made efforts to get SA mental health treatment and to get him in school. Previously, SA's needs were not being met by his mother. (Testimony of Petitioner)

### **DISCUSSION**

The Kinship Care benefit is a public assistance payment of \$220 per month per child paid to a qualified relative who bears no legal responsibility to support the child. In Wisconsin, this benefit replaces the former Non-Legally Responsible Relative (NLRR) Aid to Families with Dependent Children (AFDC) payment. To be eligible for the payments, the relative must meet all of the conditions set forth in Wis. Stat. §§48.57(3m)(am)(1-5) or 48.57(3n)(am)(1-6). Subsection (3m) concerns Children in Need of Protection or Services (CHIPS) and subsection (3n) concerns guardianship cases.

In this case Petitioner does not yet have guardianship, so Petitioner is not eligible to receive Kinship under Wis. Stats. §48.57(3n).

This case turns on whether Petitioner meets eligibility criteria under Wis. Stats. §48.57(3m)(am)(1-5) which states in pertinent part:

...A county department and, in a county having a population of 500,000 or more, the department shall make payments in the amount of \$220 per month to a kinship care relative who is providing care and maintenance for a child if **all** of the following conditions are met:

1. The kinship care relative applies to the county department or department for payments under this subsection and the county department or department determines that there is a

need for the child to be placed with the kinship care relative and that the placement with the kinship care relative is in the best interests of the child.

2. The county department or department determines that the child meets one or more of the criteria specified in s. 48.13 or 938.13, that the child would be at risk of meeting one or more of those criteria if the child were to remain in his or her home or, if the child is 18 years of age or over, that the child would meet or be at risk of meeting one or more of those criteria as specified in this subdivision if the child were under 18 years of age.

*§48.57(3m)(a)2(am), Wis. Stats.  
Emphasis Added*

*The Need for Placement and the Best Interests of the Child*

The Wisconsin Administrative Code, at *§DCF 58.10(1)*, describes the “need” for placement as follows:

...The agency shall determine that the child needs the kinship living arrangement by determining at least one of the following:

- a) The child's need for adequate food, shelter and clothing can be better met with the relative than with the child's parent or parents.
- b) The child's need to be free from physical, sexual or emotional injury, neglect or exploitation can be better met with the relative than with the child's parent or parents.
- c) The child's need to develop physically, mentally and emotionally to his or her potential can be better met with the relative than with the child's parent or parents.
- d) The child's need for a safe or permanent family can be better met with the relative than with the child's parent or parents.

Clearly, SA’s needs cannot be met by his father, because he is a convicted sex offender. SA’s needs for adequate shelter cannot be met by his mother, because she is living in subsidized housing for the elderly and disabled and he would not be allowed to live there. In addition, it is clear that SA’s need to be free from emotional injury and his need to develop physically, mentally and emotionally were not being met by his mother, given how often he was truant and out sick from school. Accordingly, it is found that SA’s needs would be better met with Petitioner who has since gotten SA mental health treatment and made efforts to keep SA in school.

*The risk that SA would meet the criteria under Wis. Stats. §48.13*

Wis. Stat. §48.13, which provides for jurisdiction over children alleged to be in need of protection or services and states in relevant part:

The court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and:

- (1) Who is without a parent or guardian;
- (2) Who has been abandoned;
- (2m) Whose parent has relinquished custody of the child under s. 48.195 (1);
- (3) Who has been the victim of abuse, as defined in s. 48.02 (1)(a), (b), (c), (d), (e) or (f), including injury that is self-inflicted or inflicted by another;
- (3m) Who is at substantial risk of becoming the victim of abuse, as defined in s. 48.02 (1)(a), (b), (c), (d), (e) or (f), including injury that is self-inflicted or inflicted by another, based on reliable and credible information that another child in the home has been the victim of such abuse;

- (4) Whose parent or guardian signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child;
- (5) Who has been placed for care or adoption in violation of law;
- (8) Who is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;
- (9) Who is at least age 12, signs the petition requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide;
- (10) Whose parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;
- (10M) Whose parent, guardian or legal custodian is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;
- (11) Who is suffering emotional damage for which the parent, guardian or legal custodian has neglected, refused or been unable and is neglecting, refusing or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to ameliorate the symptoms;
- (11m) Who is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which the parent, guardian or legal custodian is neglecting, refusing or unable to provide treatment; or
- (13) Who has not been immunized as required by s. 252.04 and not exempted under s. 252.04 (3).

Petitioner testified credibly that SA's mother was not adequately addressing his need for mental health treatment. This is corroborated by SA's attendance records. This neglect was not for reasons of poverty. According to Petitioner's credible testimony, SA's father was working and providing for the family at the time and SA's mother has only recently fallen on difficult economic times because his father was incarcerated and convicted of sexual assault of a child. (See also Exhibit 1)

Based upon the foregoing, it is found that SA is at risk of becoming a child in need of protection or services under Wis. Stat. §48.13, if left in the care of his mother.

Accordingly, it is found that Petitioner is eligible for Kinship Care payments for SA.

### **CONCLUSIONS OF LAW**

The Waukesha County Department of Health and Human Services incorrectly denied Petitioner's application for Kinship Care benefits.

**THEREFORE, it is**

### **ORDERED**

That the matter be remanded to the Waukesha County Department of Health and Human Services/the Department of Children and Families to take the necessary steps to issue Petitioner Kinship Care Benefits back dated to August 15, 2013, the date of application. The agency shall do this within ten days of this order.

## REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

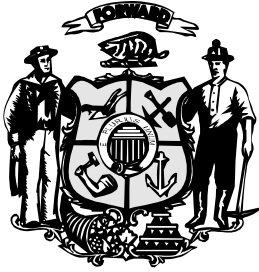
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 9th day of December, 2013.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on December 9, 2013.

Kinship-DCF  
DCF - Kinship Care